
OLR Bill Analysis

sSB 1214

AN ACT CONCERNING REVISIONS TO THE NONRESIDENT CONTRACTOR BOND STATUTE.

SUMMARY:

To secure payment of Connecticut taxes in connection with a nonresident contractor's in-state activities, current law requires a person doing business with a nonresident contractor to either (1) hold back and deposit with the Department of Revenue Services (DRS) 5% of the contract price or (2) obtain proof from the contractor that it has posted a bond for the equivalent amount with DRS.

This bill revamps these tax security requirements to, among other things:

1. require DRS, upon request, to verify whether nonresident contractors and subcontractors are registered with DRS for tax purposes, have filed all required tax returns, and, if required, have posted a bond with DRS;
2. impose the bond requirement only on nonresident general or prime contractors, and the hold-back requirement only on nonresident subcontractors, who are not so verified by DRS;
3. require general contractors, rather than customers, to hold back funds from their unverified subcontractors; and
4. require customers contracting with unverified general or prime contractors to obtain proof that the contractor has posted the required bond.

Current law makes anyone who does business with a nonresident contractor without complying with the security requirements personally liable for the contractor's taxes stemming from the project.

The bill applies this liability to anyone who does business with an unverified prime or general contractor without obtaining proof that the contractor has posted the required bond. It also caps the customer's liability at 5% of the contract price. The bill specifies that the personal liability applies to sales, use, or withholding taxes the contractor owes that arise from its activities under the contract. As under current law, a customer must also pay any use taxes due on purchases of services from the unverified contractor in connection with the project.

The bill exempts contracts whose total contract price is less than \$250,000. In addition, as under current law, the tax security requirements do not apply to a homeowner's or tenant's contract involving his or her own residence with three or fewer units.

As under current law, the "contract price" covers all contract charges, including deposits, retainage, change orders, or charges for add-ons.

EFFECTIVE DATE: October 1, 2011

NONRESIDENT CONTRACTORS

Under the bill, as under current law, a nonresident contractor or subcontractor is one who does not continuously maintain or occupy any Connecticut office, factory, warehouse, or other space where it regularly and systematically does business in its own name through employees who are (1) in regular attendance and (2) carrying on the contractor's business in the contractor's own name.

VERIFIED NONRESIDENT CONTRACTORS AND SUBCONTRACTORS

The bill requires the DRS commissioner, upon request, to verify whether a nonresident contractor or subcontractor:

1. has (a) been registered with DRS for all applicable taxes (sales and use and income tax withholding) for at least three years before it concludes a contract covered by the bill's security requirements, (b) filed all required tax returns, and (c) no outstanding tax liabilities with DRS; or

2. (a) is registered with DRS for all applicable taxes, (b) has filed all required tax returns and has no outstanding liabilities with DRS, and (c) has posted a valid bond with DRS in an amount the commissioner determines up to a maximum of six times the contractor's average tax liability. The bond must be with a surety company authorized to do business in Connecticut.

It requires DRS to treat contractors and subcontractors who meet either of these two sets of conditions as "verified contractors." Verified contractors are not subject to the bill's tax security requirements (see below).

UNVERIFIED NONRESIDENT CONTRACTORS AND SUBCONTRACTORS

Tax Security Requirements

Current law allows two alternative methods of ensuring tax security when someone hires a nonresident contractor for a project in Connecticut. The first is for the customer to hold back 5% of the contract price and deposit it with DRS. The second is for the nonresident contractor to post a bond equal to that amount with DRS.

The bill divides nonresident contractors into two categories:

1. "prime or general" contractors, who either (a) make contracts with those who own or control real property to perform services, furnish material, or both on construction projects involving the property or (b) own or lease real estate to develop for others to occupy and, in the course of development, contract, change, or improve it, and
2. subcontractors, who contract with either prime or general contractors or other subcontractors to perform part of the contract work.

The bill eliminates the customer hold-back option; imposes the bond requirement only on unverified nonresident contractors who qualify as general or prime contractors; and requires general or prime contractors, rather than customers, to hold back 5% of the payment to

unverified subcontractors to provide security for tax payment.

Bond Requirement for Unverified General Contractors

The bill requires every unverified prime or general contractor that makes a contract priced at more than \$250,000 for a project in Connecticut to post a bond with DRS equal to 5% of the contract price. The bond is to secure payment of required taxes by both the general or prime contractor and its subcontractors.

Hold-Back Requirements for Unverified Subcontractors

The bill requires any resident or verified or unverified nonresident general or prime contractor that does business with an unverified subcontractor to hold back 5% of its payments to the subcontractor until the subcontractor furnishes a certificate of compliance from DRS authorizing the general contractor to release all or part of the hold-back (see below). The contractor must keep the hold-backs in a special fund in trust for the state. The bill eliminates the requirement that hold-backs be periodically transferred to DRS and that DRS hold the money in a special trust fund.

General or prime contractors must give unverified subcontractors written notice of the hold-back requirements by the time the subcontractor begins work under the contract. As under current law, no subcontractor may sue a general or prime contractor for holding back payments to comply with the bill.

RELEASING BONDS AND HOLD-BACKS

Under current law, a contractor who posted a bond or whose payments were withheld must file a written request, within three years after the final payment to DRS, that the DRS commissioner audit its records for the project to determine if it owes taxes. If a contractor fails to file its request in time, it waives the right both to an audit and any refund of excess amounts withheld or excess bond amounts. DRS must refund excess amounts from the bond or hold-back within 90 days after completing its audit and issuing a certificate of no tax due.

The bill instead establishes separate procedures for releasing bond

obligations and hold-backs.

Bond Obligations

The bill requires the DRS commissioner to release an unverified general or prime contractor from its bond obligation once the contractor satisfies the commissioner, by submitting necessary documentation that includes any DRS-prescribed forms, that:

1. the contractor and its unverified subcontractors have paid all the taxes they owe in connection with the contract or
2. the contractor has (a) paid all taxes it owes in connection with the contract, (b) held back the required 5% of its payments to any unverified subcontractors, and (c) released the hold-backs to a subcontractor in accordance with a DRS certificate of compliance authorizing it to release all or part of those amounts.

Hold-Backs – Certificate of Compliance

Once an unverified subcontractor's work on the contract is completed, the bill requires it file a written request that the DRS commissioner issue a certificate of compliance authorizing the general contractor to release all or part of its hold-backs. After receiving the request and any documentation and forms he or she considers necessary, the commissioner must review it in the context of generally accepted construction industry cost guidelines for the project's scope and type. The commissioner has 120 days after receiving the required documentation to issue a certificate allowing release of all or part of the hold-backs. If no certificate is issued within that time, the commissioner is deemed to have issued one.

If the certificate authorizes the general contractor to release the full amount of the hold-back, the contractor must do so; if the certificate authorizes partial release of part of the hold-back, the general contractor must pay the required amount to the subcontractor and pay the balance to DRS. In the latter case, the contractor is liable neither to the subcontractor for failing to pay the full amount nor to the commissioner for failing to pay the subcontractor's taxes arising from

the project.

The bill imposes a 10% penalty on any general contractor who fails to pay DRS the balance of a partially released hold-back within 30 days after DRS mails the certificate of compliance. It allows DRS to use existing tax collection procedures to collect the required payment and the penalty. Under the bill, DRS must treat issuance of a certificate authorizing a partial release of hold-backs as a notice of assessment under the sales and use tax law. That law requires the commissioner to give written notice of the assessment, either by personal service or by mail, at the address appearing in DRS records.

The certificate of compliance does not prevent the commissioner from exercising his or her authority to examine an unverified subcontractor's tax returns, books, and records and, if appropriate, making an assessment against the subcontractor for tax deficiencies stemming from activities other than the project to which the certificate of compliance applies.

DRS DISCLOSURES

In addition to allowing DRS to verify nonresident contractors and subcontractors, the bill requires it, upon request, to:

1. disclose, to a person doing business with an unverified subcontractor and who is consequently required to hold-back part of the subcontractor's payments, whether the subcontractor has requested or been issued a certificate of compliance;
2. disclose, to a person doing business with an unverified prime or general contractor, whether that contractor has posted the required bond; and
3. verify whether a contractor or subcontractor is a resident contractor.

The bill also allows the DRS commissioner to give a requestor a copy of a subcontractor's certificate of compliance.

COMMITTEE ACTION

Finance, Revenue and Bonding Committee

Joint Favorable Substitute

Yea 52 Nay 0 (04/07/2011)